rubber" and in section 6(iii)(a), the expression "postponed the initial tapping of his rubber plants substantially beyond maturity.

It appears to me to follow that the Legiaslature regards a tree as tappable when it becomes mature for tapping and not before. Whether or not a tree is mature for tapping is a matter of fact to be proved in the same manner as other matters of fact.

I rule that in the form under consideration the expression "tappable rubber" means "rubber plants mature for tapping."

In the second instance, the Court had to construe the expression "wilfully furnishes . . . false information" in section 21(i)(c) of the Enactment. The question is whether the word "wilfully" governs only the one word "furnishes" or whether it also governs the word "false."

Now if the Legislature had intended by "false . . . information" to denote "wilfully false . . . information," it could easily have said so: and from the fact that it has not said so, the Court, in my opinion, ought to hold that it deliberately refrained from saying so.

According to "the grammatical and ordinary sense of the words," and "the plain, fair, literal meaning of its words," the Enactment, in my opinion, indicates that the word "wilfully" governs only the one word "furnishes," and not the word "false" in addition; and I think it would be unjustifiable and wrong for the Court to add the word "wilfully" before the word "false."

I rule that an offence is committed if the false information is wilfully furnished, irrespective of whether that information is or is not wilfully false.

I am aware that in interpreting section 39(e) of the Trade and Customs Enactment, the Court has held that in the expression "knowingly . . . is in possession of . . . uncustomed goods," the word "knowingly" governs the expression "uncustomed goods," and that no offence is committed unless the accused person knows that duty has not been paid on the goods.

But this interpretation can only be justified on the ground that it would "lead to some absurdity" or "lead to manifold injustice" if the alternative construction were adopted.

As an example of this alternative construction one might take the instance of a person who purchases a bottle of beer at an up-country shop: this person and the shopkeeper would commit an offence if the wholesale dealer at Johore Bahru had, months or years previously, omitted, intentionally or unintentionally, to pay the duty on the beer.

The imposition of such a vicarious liability appeared to the Court so absurd and unjust that it held that the Legislature could not have so intended.

But no such consideration applies in the case of returns made under the Rubber Regulation Enacment: and in the great majority of cases it is scarcely more difficult for the occupier of a holding to state how many rubber plants he has than to state how many pounds he weighs: in any case the information is ascertainable with comparative ease, and it is not necessary for the occupier to rely on any act of another person.

In adhering to the great fundamental principle that the Court ought to give to an Enactment the plain, fair, literal meaning of its words, I merely follow what has been called the Golden Rule by a Lord Chief Justice of England: see *Maxwell* on the Interpretation of Statutes, 7th edition, p. 3.

I have asked the Deputy Public Prosecutor to bring my ruling to the notice of the Legal [50] Adviser, [50] and if by following the Golden Rule I have imposed on the subject a criminal liability which the Legislature did not intend, I have no doubt that the Legislature will clarify the position.

Appeal dismissed.

Solicitors: *S. C. Goho & Co.*

GOH ENG SEONG v. TAY KENG SEOW & ORS.

[O.C.J. (Mills J.) December 19, 1935]

[Johore Originating Summons No. 67 of 1935]

Fixtures — Things "attached to the earth" — Whether immovable property — Interpretation — Adoption of English law in Johore — Civil Procedure Code, s.303; Land Enactment, 1910, s.56A; General Clauses Enactment, 1911, *s.2(vii).*

The English law of fixtures applies in the State of Johore so that any machinery attached to the earth or permanently fastened to anything attached to the earth is part of the land on which it is installed.

By a charge made on August 20, 1929 the 1st defendant charged in favour of the 2nd defendant the land and buildings comprising the Chin Lim Pineapple Factory; and by a bill of sale made on May 5, 1932, assigned to the plaintiff the machinery installed in the factory.

In these proceedings the plaintiff applied for liberty to sell the machinery. The 2nd defendant opposed the application on the ground that the machinery in question was comprised in the property already charged to them.

The application was heard by Mills J. on December 11, 1935.

Barrett for the plaintiff.

1st defendant in person.

Coltart for the 2nd defendant.

Cur. Adv. Vult.

Mills J.: In this matter a dispute arose as to machinery which may be claimed as "land" under a charge, and machinery which may be claimed as "movable property" under a bill of sale. In section 56A of the Land Enactment, 1910, the word "land" is interpreted to include "things attached to the earth or permanently fastened to anything attached to the earth." Moreover, such things are made "immovable property" by section 2(vii) of the General Clauses Enactment.

Accordingly the second defendant claimed as land under his charge such machinery as was attached to

the earth or permanently fastened to anything attached to the earth.

The most important point arising for determination was whether the English law of fixtures applies in Johore.

I hold that it does apply.

I base this ruling on the grounds on which the judges of the Court of Appeal in the case of *Goh Chong Hin* v. *Consolidated Malay Rubber Estates Ltd.*, (5 F.M.S.L.R. p. 86) decided that the English law of fixtures is applicable in the Federated Malay States.

First, the Legislature of Johore has by necessary implication declared as its policy the adoption of the English law on this point; for section 303 of the Civil Procedure Code in use in Johore introduces the law as to tenant's fixtures, and that is only intelligible and applicable by introduction of the General English law of fixtures of which it forms a part.

Secondly, in the definition of "land" in the Land Enactment, the draftsman used such apt words for the introduction of the English law of fixtures as to make it appear likely that the legislature intended its adoption.

Thirdly, the balance of convenience and reason demand that the Court of Johore should adopt, not a local hybrid system of its own, but the English law of fixtures which prevails in the neighbouring jurisdictions of the Colony and Federated Malay States.

The most important principle of the English law in its bearing on the present proceeding, is that laid down in the case of *Holland* v. *Hodgson*, (7 C.P. 328), "an article which is affixed to the land even slightly is to be considered part of the land, unless the circumstances are such as to show that it was intended all along to continue as to chattel, the onus lying on those who contend that it is a chattel . . . ."

Finally, I rule that it is pertinent, so far as local circumstances permit, to apply English tests and draw English distinctions, as they appear in the decisions of English cases.

Solicitors: *Barrett & Co.; Rodyk & Davidson.*

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STRAITS SETTLEMENTS REPORTS

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REX v. TAN KEE LENG

[A. Cr. J. (Gordon-Smith J.) November 2, 1935]

[Singapore Magistrate's Appeal No. 34 of 1935]

Penal Code, s.409 — Criminal Breach of Trust — Goods on consignment.

The delivery of goods by a merchant to an agent "on consignment" in the absence of express stipulation to the contrary entitles the consignor to demand from the agent the return of the goods at any time or the balance of the goods unsold and to payment at any time for such goods as the agent may have sold. Similarly the agent may return any such goods to the consignor at any time. The agent obtains possession of the goods but neither the property nor the ownership in such goods passes to him and such remains in the consignor. If the agent dishonestly fails to return the goods or to pay for them he may be charged with having committed criminal breach of trust of which offence dishonesty is a necessary ingredient.

MAGISTRATE'S APPEAL.

Tampoe Phillips for the appellant.

Worley (Deputy Public Prosecutor) for the Crown.

The facts and arguments are fully set out in the judgment.

Cur. Adv. Vult.

Gordon-Smith J.: The accused was charged under section 409 of the Penal Code with having committed criminal breach of trust in respect of certain printed piece goods of the value of $1,013.30, with which he, being an agent, had been entrusted.

The offence was alleged to have been committed between the 16th March and the 6th June, 1935.

After a trial which occupied five days, the accused was, on the 14th September, 1935, convicted by the District Judge and sentenced to 22 weeks' rigorous imprisonment.

Against this conviction the accused now appeals on the ground that the conviction was wrong in law and was against the weight of evidence and the probabilities of the case. Details of these allegations are given in the Petition of Appeal and I will deal with them specifically at a later stage of this judgment.

The facts of the case are, briefly, as follows:—

(1) The complainant, Harold Irving Jones, trading as Irving Jones & Co. of 127 Cecil Street, Singapore, and hereinafter referred to as "the complainant," is a general merchant who deals mostly in piece goods by way of wholesale trade and has done business with the accused for about two years and since the accused opened a retail shop at 118 Cross Street, Singapore. On the 16th March last, the accused came to the complainant who had some old out-of-date stock that he wanted to get rid of. He tried to sell it to the accused, without success but after some bargaining the accused agreed to take it "on consignment." The complainant's evidence as to this transaction is as follows: — "this meant that they were given to him on behalf of me to sell at a minimum price fixed by me; they remained my property till he paid for them at the agreed price. He held them in trust for me and on my account. He was allowed to make two cents per yard profit or 10% on agreed price. In this case I fixed the price low at 20 cents per yard and stipulated that they should be sold for cash."

Subsequently the goods, which amounted to 5,066½ yards, were delivered to the accused together with two invoices on which the accused put his chop mark as an acknowledgment and which were returned to the complainant. The complainant states that he gave these invoices personally and got them personally. They were specifically marked with the words "on consignment", to shew the nature of the transaction and to distinguish it from other business transactions which had passed between the complainant and accused.

(2) To confirm and corroborate the meaning of "on consignment" and as to the nature of the transaction, another merchant, a Mr. Jackson gave evidence as follows:—

"I have often given goods on consignment. This term means goods put out on trust for sale or return. Consignor can at any time demand goods or their money equivalent.

That is a general arrangement recognised by the Chamber of Commerce and I should call it world wide interpretation of 'on consignment.' Consignee is responsible to consignor."